



## LODI CITY COUNCIL

Carnegie Forum

305 West Pine Street, Lodi

## AGENDA – SPECIAL MEETING

Date: December 10, 2008

Time: Special Closed Session 6:00 p.m.  
Special Meeting 6:30 p.m.

For information regarding this agenda please contact:

**Randi Johl**

**City Clerk**

**Telephone: (209) 333-6702**

**NOTE:** All staff reports or other written documentation relating to each item of business referred to on the agenda are on file in the Office of the City Clerk, located at 221 W. Pine Street, Lodi, and are available for public inspection. If requested, the agenda shall be made available in appropriate alternative formats to persons with a disability, as required by Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof. To make a request for disability-related modification or accommodation contact the City Clerk's Office as soon as possible and at least 24 hours prior to the meeting date.

**C-1 Call to Order / Roll Call**

**C-2 Announcement of Closed Session**

- a) Conference with Dean Gualco, Human Resources Manager (Labor Negotiator), Regarding Association of Lodi City Employees Regarding General Services and Maintenance & Operators Pursuant to Government Code §54957.6

**C-3 Adjourn to Closed Session**

**NOTE: THE FOLLOWING ITEMS WILL COMMENCE NO SOONER THAN 6:30 P.M.**

**C-4 Return to Open Session / Disclosure of Action**

**A. Call to Order / Roll call**

**B. Public Hearings**

- Res. B-1 Public Hearing to Consider the Appeals of Browman Development Company and Wal-Mart Stores, Inc. Regarding the Decision of the Planning Commission to Not Certify the Final Revised Environmental Impact Report Regarding the Lodi Shopping Center Project Located at 2640 West Kettleman Lane (CD)

**NOTE: This item is a quasi-judicial hearing and requires disclosure of ex parte communications as set forth in Resolution No. 2006-31**

**C. Adjournment**

Pursuant to Section 54956.2(a) of the Government Code of the State of California, this agenda was posted at a place freely accessible to the public 24 hours in advance of the scheduled meeting.

\_\_\_\_\_  
Randi Johl  
City Clerk

**\*\*NOTICE:** Pursuant to Government Code §54954.3(a), public comments may be directed to the legislative body concerning any item contained on the agenda for this meeting before (in the case of a Closed Session item) or during consideration of the item.\*\*



## CITY OF LODI COUNCIL COMMUNICATION

**AGENDA TITLE:** Conduct a public hearing to consider two appeals of the Planning Commission's decision to not certify the Final Revised Environmental Impact Report (FREIR) regarding the Lodi Shopping Center project located at 2640 West Kettleman Lane.

**MEETING DATE:** December 10, 2008

**PREPARED BY:** Interim Community Development Director

---

**RECOMMENDED ACTION:** Conduct a public hearing and consider the two appeals of the Planning Commission action.

**BACKGROUND INFORMATION:** Two appeals have been filed concerning the certification of the Final Revised Environmental Impact Report (FREIR) for the Lodi Shopping Center. The law firms of Sheppard Mullin Richter & Hampton LLP on behalf of Wal-Mart Stores, Inc. (the proposed anchor tenant) and Remy Thomas Moose and Manley, LLP on behalf of Browman Development Company (the applicant) have filed the appeals. Both of the appeals seek review of the Planning Commission's action on October 8, 2008 declining to certify the Final Revised Environmental Impact Report that was prepared for the project. Since both appeals are for the benefit of the project proponents and make the same arguments, they will be treated concurrently in this staff report.

The original Final Environmental Impact Report and the associated Lodi Shopping Center project came to the Planning Commission on December 8, 2004. At the conclusion of that meeting, the Planning Commission certified the Final Environmental Impact Report (FEIR) and approved a Use Permit to allow the construction of the Lodi Shopping Center, the sale of alcoholic beverages at the Wal-Mart Supercenter and a Tentative Map to create 12 parcels.

Two appeals were filed concerning the Planning Commission's certification of the FEIR and approval of the project. The City Council considered the appeals. On February 3, 2005, the City Council certified the FEIR for the Lodi Shopping Center project. On February 16, 2005, the City Council approved the Use Permit for the construction of the Lodi Shopping Center, allowed the sale of alcoholic beverages at the Wal-Mart Supercenter, and approved the Tentative Map to create 12 parcels. The Council added to the Planning Commission's condition regarding the existing Wal-Mart building by allowing various options and expansions.

The City Council's approval of the Lodi Shopping Center was challenged in court on environmental grounds. On December 19, 2005, the San Joaquin County Superior Court found the EIR to be deficient with respect to cumulative urban decay impacts and energy impacts. The Court found the balance of the environmental document consistent with CEQA. The Court ordered the City to void the project approvals, pending correction of the deficiencies in the FEIR. The Court also ordered

---

APPROVED: \_\_\_\_\_  
Blair King, City Manager

the City to vacate approval of the following Planning Commission and City Council resolutions approving the project:

- a) Planning Commission Resolution PC 04-64 certifying the EIR 03-01 adopted on December 8, 2004;
- b) Planning Commission Resolution PC 04-65 approving Use Permit U-02-12 and Tentative Parcel Map 03-P-001 adopted on December 8, 2004;
- c) City Council Resolution 2005-26 certifying the EIR 03-01 adopted on February 3, 2005; and
- d) City Council Resolution 2005-38 approving Use Permit U-02-12 and Tentative Parcel Map 03-P-001 adopted on February 16, 2005.

On May 3, 2006, the City Council adopted Resolution 2006-81 rescinding the above listed Planning Commission and City Council Resolutions relating to the Lodi Shopping Center. The City Council also adopted Resolution 2006-82, authorizing agreements with two consulting firms to prepare revisions to the Lodi Shopping Center EIR that was found deficient by the Superior Court.

## **PROJECT DESCRIPTION:**

### **Revisions to the Lodi Shopping Center EIR:**

In the case of Lodi First v. City of Lodi, San Joaquin Superior Court Case No. CV025999 (“Lodi First”), the Court ordered revisions to the discussions of cumulative urban decay impacts and energy impacts. In all other respects, the Court found the EIR to be legally sufficient under CEQA. However, the City decided to make revisions to three additional areas of the EIR, including the statement of project objectives, the discussion of agricultural resources, and the discussion of project alternatives. These areas of additional analysis were the subject of a lawsuit entitled Citizens for Open Government v. City of Lodi, San Joaquin Superior Court Case No. CV026002 (“C.O.G.”). The C.O.G. case was resolved after the court’s decision in Lodi First by a stipulated order of dismissal, preserving to the C.O.G. plaintiffs the right to continue to assert certain previously made claims as to the adequacy of the environmental analysis. The Revised EIR document includes only the above five (5) sections which were revised or augmented. Since the remainder of the original EIR is not subject to further review, the original EIR, as amended by the Revisions to the EIR document, cures the deficiencies identified by the Court.

The Revisions to the EIR were subject to the full administrative and public review. A Notice of Preparation (“NOP”) was prepared describing the legal context, a project description and a brief overview of the topics to be covered in the Revisions document. The NOP was made available to the State Clearinghouse in the Office of Planning and Research for State agencies, was sent to non-state agencies, and was posted and made available to the public to solicit input on the five (5) sections that were revised in the FREIR. After a period of analysis and formulation, the Draft Revised Environmental Impact Report (DREIR) was prepared. The City filed a Notice of Completion (“NOC”) with the State Clearinghouse and posted, published, and distributed the Notice of Availability of the DREIR. This began the public and agency review period for the document. The length of the public review period was 52 days. During the review period, the Planning Commission held a public hearing on November 14, 2007, to receive oral and written comments on the DREIR. The City prepared formal written responses to all the comments received as well as an addendum section indicating further revisions made to the document. The revisions, comments on the DREIR, and responses to comments constitute the FREIR for the Lodi Shopping Center Project and are presented for certification.

## **Summary of Specific Impacts and their Mitigations:**

### **A. Urban Decay Impacts**

The revisions to the EIR re-analyzed the potential for urban decay due to the cumulative economic effects of competing retail projects. This analysis was prepared by the economic consulting firm of Bay Area Economics (BAE). The REIR analyzed the regional effects of Wal-Mart Supercenters as well as the effects of the commercial area of the Reynolds Ranch development project.

The BAE study found that existing retail centers in Lodi may be subject to a reduction in sales due to competition from new retailers within the proposed project. The study also found that it is possible that one or more businesses can close and the affected properties could be subject to long-term vacancies under cumulative conditions. However, while such closures and vacancies are possible, they are not reasonably foreseeable. The BAE study concluded that if closures and long-term vacancies were to occur, they would not result in total neglect or abandonment thereby leading to urban decay or physical deterioration. As explained in the REIR and the BAE analyses, the evidence gathered as part of the economic analysis is insufficient to support a finding that the project alone would result in or contribute to business vacancies or a downward spiral resulting in physical deterioration or urban decay. No urban decay or physical deterioration is reasonably foreseen to occur, and that is the test under CEQA for an environmental impact. Consequently, the FREIR finds that there are no cumulative urban decay impacts and no mitigation measures are proposed.

Even without an identified urban decay impact, the City has committed to aggressive code enforcement measures to ensure the abatement of any nuisance within the City and to prevent the physical deterioration of communities. In this vein, in August of 2008, the City added another member to its Community Improvement Division by hiring a new Supervising Community Improvement Officer.

The REIR analyzed the Reynolds Ranch project at approximately 640,000 square feet. As a result of the City Council's most recent approval of the Reynolds Ranch project at 750,000 square feet, the City asked Matt Kowta, a Principal with BAE, to review the previously prepared study and the potential impacts of the additional area. The memorandum from BAE is included as an attachment to the Planning Commission staff report. In summary, the conclusion is that "This review process has shown that even if BAE had assumed that Reynolds Ranch was to be developed with 750,000 square feet of retail space when preparing the October 2007 analysis, the conclusions and findings would not have been significantly different than they are at present." Thus, the additional space does not change the impact conclusions of the REIR. Additionally, the recent Reynolds Ranch EIR Addendum, which analyzed the impacts of the larger project, did not find any additional economic or urban decay impacts as a result of the increased project size.

Based on this information, the REIR concluded that while it is possible that the proposed project, in combination with the Reynolds Ranch project, will result one or more business closures, it is not reasonably foreseeable that such closures would lead to total neglect or abandonment of the business or urban decay. Should there be a business closure, the potential for physical deterioration will depend largely on the commitment of the property owner to maintain the property. Should the owner fail to maintain the property, City code enforcement staff would pursue active and aggressive enforcement as previously directed by City Council. Accordingly and as further explained in the REIR, even assuming a reasonable worst-case scenario that results in one or more business closure, urban decay impacts of the Lodi Shopping Center, when combined with the economic effects of projects such as Reynolds Ranch, would result in a less-than-significant cumulative urban decay impact.

### **B. Energy**

The REIR also addressed energy impacts. The analysis found no significant energy consumption impacts or impacts on energy supplies and infrastructure. Therefore, no mitigation measures are necessary.

C. Agricultural Resources.

The original EIR found an impact from the conversion of approximately 40 acres of prime agricultural use to urban uses to be a significant and unavoidable impact because there is no feasible mitigation that would reduce this impact to a less-than-significant impact except for an outright prohibition of all development on prime agricultural lands.

The REIR confirms the significant and unavoidable impact on agricultural resources, but requires the project applicant to obtain a permanent agricultural conservation easement over a single parcel of land of at least 40 acres of prime farmland. The easement shall be located in San Joaquin County, excluding the Delta Primary Zone as currently defined by State law, and shall be in current agricultural use or be put into agricultural production.

D. Project Objectives and Alternatives.

The remaining revisions to the EIR modified the project objectives and changed the alternative project location that was analyzed. The original alternative location was the Reynolds Ranch project site. As this site is subject to an active development application, a new site at the northeast quadrant of Highway 12 and Thornton Road was evaluated.

The above sections were the focus of the revisions to the EIR for the Lodi Shopping Center and modified impacts, mitigation measures, findings, and statements of overriding considerations have been prepared as is included in the proposed resolution of certification.

**Planning Commission Meeting October 8, 2008:**

As noted, on October 8, 2008, the Planning Commission held a public hearing to consider the FREIR, as well as the requests for a Use Permit for the project in a C-S Community Shopping Zone, approval to sell alcoholic beverages within the Wal-Mart store, a Tentative Map to subdivide the property and Site Plan and Architectural Review approval for the site and building plans for Wal-Mart.

The Planning Commission heard testimony from 38 people. A copy of the Planning Commission minutes are attached which provide an overview of the various points raised. Following the public hearing, the Commission discussed its issues with the project. A few Commissioners were uncomfortable with the conclusions of the revised environmental document and believed that additional information would be necessary in order for them to certify the revised environmental impact report. The main area of concern was the adequacy of the urban decay analysis. To a lesser extent, the potential energy impacts of the project were questioned. Finally, two Commissioners expressed interest in receiving information concerning the project's impacts on greenhouse gas impacts. After concluding its discussion on the adequacy of the FREIR, the Commission ultimately declined to certify the FREIR.

As indicated in the background section of this memorandum, the economic analysis was prepared by BAE. BAE has been in business since 1986 with over 20 professionals in four offices across the country. In that time they have provided services in a variety of areas including real estate feasibility studies, strategic planning, revitalization, public-private transactions, public financing, fiscal and economic impacts analyses, and development advisory services. They are experts in the field. CEQA case law allows the City to defer to the environmental conclusions reached by the

experts that prepared or contributed to the EIR, even though others may disagree with the underlying data, analysis, or conclusions.

Due to the Planning Commission's action on the environmental document, no action was taken on the applicant's other requests. Should the City Council decide to certify the FREIR, the Planning Commission must hold a subsequent hearing to review and make a determination on the project approvals.

**FISCAL IMPACT:**     None

**FUNDING AVAILABLE:**     None

---

Konradt Bartlam  
Interim Community Development Director

Attachments:     Sheppard Mullin Richter & Hampton Appeal dated October 10, 2008  
                         Remy Thomas Moose and Manley Appeal dated October 13, 2008  
                         Planning Commission Minutes from October 8, 2008  
                         Planning Commission packet from October 8, 2008  
                         Draft Resolutions